

Office of
The City Attorney
City of San Diego

MEMORANDUM
MS 59

(619) 533-5800


DATE: December 5, 2007
TO: Karen Crenshaw, Office of the City Clerk
All Council Members
The Honorable Mayor
FROM: City Attorney
SUBJECT: Brush Management Ordinance –Revised Copy

Attached please find a revised strikeout and clean copy of the Brush Management Ordinance (O-2008-60) adopted by the City Council on December 4, 2007, to reflect additional modifications to San Diego Municipal Code section 142.0412(m)(7).

Respectfully submitted,

MICHAEL J. AGUIRRE, City Attorney


By


Jana L. Garmo
Deputy City Attorney

cc: Amanda Lee, Senior Planner Development Services Department
Brock Ladewig, Chief Deputy City Attorney

APPROVED: MICHAEL J. AGUIRRE, City Attorney

By


Jana L. Garmo
Deputy City Attorney

JLG:als

12/05/07

Or.Dept:DSD

O-2008-60

I hereby certify that the foregoing Ordinance was passed by the Council of the City of San Diego, at this meeting of _____.

ELIZABETH S. MALAND
City Clerk

By _____
Deputy City Clerk

Approved: _____
(date)

JERRY SANDERS, Mayor

Vetoed: _____
(date)

JERRY SANDERS, Mayor

000837

REQUEST FOR COUNCIL ACTION CITY OF SAN DIEGO

1. CERTIFICATE NUMBER
(FOR AUDITOR'S USE ONLY)

N/A

TO: CITY ATTORNEY

2. FROM (ORIGINATING DEPARTMENT):

DEVELOPMENT SERVICES DEPARTMENT

3. DATE:

11/9/2007

159

4. SUBJECT:

REVISIONS TO BRUSH MANAGEMENT REGULATIONS TO FINALIZE LCPA CERTIFICATION PROCESS

5. PRIMARY CONTACT (NAME, PHONE, & MAIL STA.)

Amanda Lee (619) 446-5367, MS 501

6. SECONDARY CONTACT (NAME, PHONE, & MAIL STA.)

Dan Joyce (619) 446-5388, MS 501

7. CHECK BOX IF REPORT TO COUNCIL IS ATTACHED

☒ Executive Summary

8. COMPLETE FOR ACCOUNTING PURPOSES

FUND					9. ADDITIONAL INFORMATION / ESTIMATED COST:
DEPT.	1300				Work on this project is funded as an overhead expense in the Development Services (enterprise fund) budget.
ORGANIZATION	1291				
OBJECT ACCOUNT					
JOB ORDER	055500				
C.I.P. NUMBER	\$0				
AMOUNT					

10. ROUTING AND APPROVALS

ROUTE (#)	APPROVING AUTHORITY	APPROVAL SIGNATURE	DATE SIGNED	ROUTE (#)	APPROVING AUTHORITY	APPROVAL SIGNATURE	DATE SIGNED
1	ORIG. DEPT	KELLY BROUGHTON	11/16/07	8	CITY ATTORNEY	JANA GARMO	11/21/07
2	ENVIRONMENTAL	ALANSON SHERBROOD	11/13/07	9			
3	DEPARTMENT DIRECTOR	KELLY BROUGHTON	11/16/07	10			
4	CFO			11	ORIG. DEPT		
5	AUDITOR	SALLY ENRIQUETA	11/19/07	DOCKET COORD: _____ COUNCIL LIAISON: _____			
6	DEPUTY CHIEF	WILLIAM ANDERSON	11/16/07	COUNCIL PRESIDENT <input type="checkbox"/> SPOB <input type="checkbox"/> CONSENT <input type="checkbox"/> ADOPTION			
7	COO			<input type="checkbox"/> REFER TO: _____ COUNCIL DATE: _____			

11. PREPARATION OF:

☒ RESOLUTION(S)☒ ORDINANCE(S)☐ AGREEMENT(S)☐ DEED(S)

Preparation of ordinance to amend Municipal Code Chapter 4, Article 4 and Land Development Code Chapter 14, Article 2 to:

1. Amend 44.0307 and transfer the specific regulations related to goats for brush management to Section 142.0412.
2. Amend 142.0402 to clarify when brush management landscape regulations apply.
3. Amend 142.0412 to clarify revised brush management regulations.

Preparation of resolution:

1. Stating for the record that the Coastal Commission considered proposed amendments to the City's Local Coastal Program related to brush management on January 11, 2007, and February 15, 2007. On February, 15, 2007, the Coastal Commission took action to conditionally certify City of San Diego LCPA No. 1-07 as amended during the public hearing (pursuant to the Executive Director's certification letter).
2. Stating for the record that the City received the Coastal Commission letter of conditional certification dated July 25, 2007, and subsequent notice that a one year extension of time was granted on Thursday, August 8, 2007 for City Of San Diego LCPA No. 1-07.
3. Directing the Mayor to submit the final ordinance and resolution to the Coastal Commission for final certification of LCPA No. 1-07.
4. Directing City staff to submit an annual monitoring report to the Coastal Commission documenting the dates and locations of each instance of goat use, the number of acres managed, number of goats per acre, and analysis of success in reducing height and volume of vegetation for five years following the first use of goats for brush management in the coastal zone. The monitoring report shall be accompanied by photographs documenting the before and after condition of the areas managed by goats. The report shall document any instance of violation and/or required mediation during the previous year. If at the end of five years, the monitoring reports indicate that the use of goats has adversely impacted ESHA, the use of goats in the coastal overlay zone shall be discontinued.

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11A. STAFF RECOMMENDATIONS:

Introduce and adopt the ordinance. Adopt the resolution.

12. SPECIAL CONDITIONS (REFER TO A.R. 3.20 FOR INFORMATION ON COMPLETING THIS SECTION.)

COUNCIL DISTRICT(S): Citywide

COMMUNITY AREA(S): Citywide

ENVIRONMENTAL IMPACT: The final Subsequent Environmental Impact Report/Environmental Assessment and Addendum, Project No. 31245, on file in the Office of the City Clerk, has been completed and certified in compliance with the California Environmental Quality Act of 1970 (California Public Resources Code section 21000 et seq.), as amended, and the State guidelines thereto (California Code of Regulations section 15000 et seq.), and the National Environmental Policy Act (NEPA), that the report reflects the independent judgment of the City of San Diego as Lead Agency and that the information contained in said report, together with any comments received during the public review process, has been reviewed and considered by this Council in connection with the approval of the above project.

HOUSING IMPACT: The existing MSCP agreement and Land Development Code allow brush management Zone Two activity to occur within environmentally sensitive lands and within designated MHPA areas. However, the proposed language would not permit brush management for new coastal zone subdivision development within environmentally sensitive habitat areas (ESHA). While there is limited vacant, developable land remaining in the coastal zone, this proposed regulation may prevent future lot splits and subdivisions in the coastal zone.

CITY CLERK INSTRUCTIONS: Mail Notice of Public Hearing to *citywide always* and *local coastal program* lists. Publish Notice of Public Hearing as one-eighth page advertisement in newspaper. Send draft copy of docket entry to Project Manager for review.

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CITY ATTORNEY DIGEST

ORDINANCE NUMBER O-_____ (NEW SERIES)

DATE OF FINAL PASSAGE _____

EFFECTIVE DATE _____

AN ORDINANCE OF THE COUNCIL OF THE CITY OF SAN DIEGO AMENDING CHAPTER 4, ARTICLE 4, DIVISION 3, OF THE SAN DIEGO MUNICIPAL CODE BY TRANSFERRING REGULATIONS RELATED TO USE OF GOATS FOR BRUSH MANAGEMENT FROM SECTION 44.0307 TO CHAPTER 14, ARTICLE 2, DIVISION 4; AND AMENDING CHAPTER 14, ARTICLE 2, DIVISION 4, BY AMENDING SECTION 142.0402, TABLE 142-04A, AND SECTION 142.0412; ALL RELATING TO BRUSH MANAGEMENT.

This ordinance amends San Diego Municipal Code [Code] section 44.0307 by repealing regulations relating to the use of goats for brush management and transferring them to Section 142.0412(m). Additionally, new language in Section 142.0412(m) clarifies the following requirements for the use of goats: a no-fee permit, the submittal of photographs of existing site conditions and a plan describing the proposed methodology, limitations while goats are browsing, removal of droppings from brush management area, and permit denial for negligent contractors.

Code section 142.0402(b), Table A clarifies existing language in column 10, and column 11 is added to clarify the applicability of brush management regulations to new structures, additions, or subdivisions adjacent to native or naturalized vegetation.

Code section 142.0412 clarifies brush management is required in all base zones on publicly or privately owned premises that are within 100 feet of a structure and contain native or naturalized vegetation; clarifies that brush management is allowed within environmentally sensitive lands without a permit (with the exception of brush management within wetlands

which requires a discretionary permit); clarifies the types of things Zones One and Two typically consist of; clarifies the width of Zones One and Two shall not exceed 100 feet unless modified pursuant to Section 142.0412(j); clarifies that brush management review for new development requires a site-specific plan to include all creative site and/or structural design features to minimize impacts to undisturbed native vegetation; clarifies that where Zone Two is located within city-owned property, a Right of Entry shall be executed and that Zone Two brush management is not permitted in city owned open space for new development proposals; paragraph (h)(5)(A) deletes reference to non-irrigated plant material in Zone Two; paragraph (h)(5)(B) replaces the term "fire resistant" with "fire resistive"; clarifies that Zone Two shall be maintained on a regular basis by removing invasive species in addition to pruning and thinning plants, and controlling weeds; clarifies the alternative compliance authority of the Fire Chief and Building Official; paragraph (n) includes the new Coastal Commission policy related to new subdivisions within environmentally sensitive habitat areas (ESHA) and a new definition of ESHA; paragraph (o) clarifies violations and remedies available, references existing enforcement remedies, and expressly states that restoration or mitigation may be required at the sole cost of responsible person; and a new editor's note would alert users that (if passed) Resolution (R-2008-366) was in effect to temporarily allow goat monitoring in the Coastal Zone for a trial 5 year period.

The ordinance contains the City's standard implementation provisions, including a provision that this ordinance shall take effect and be in force on the thirtieth day after its final passage. However, this ordinance will not apply within the Coastal Zone until the California Coastal Commission unconditionally certifies this ordinance as a Local Coastal Program Amendment.

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(O-2008-60)

JLG:als

11/20/07

Or.Dept:DSD

O-2008-60

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-PAGE 3 OF 3-

ORDINANCE NUMBER O-_____ (NEW SERIES)

DATE OF FINAL PASSAGE _____

AN ORDINANCE OF THE COUNCIL OF THE CITY OF SAN DIEGO AMENDING CHAPTER 4, ARTICLE 4, DIVISION 3, OF THE SAN DIEGO MUNICIPAL CODE BY TRANSFERRING REGULATIONS RELATED TO USE OF GOATS FOR BRUSH MANAGEMENT FROM SECTION 44.0307 TO CHAPTER 14, ARTICLE 2, DIVISION 4; AND AMENDING CHAPTER 14, ARTICLE 2, DIVISION 4, BY AMENDING SECTION 142.0402, TABLE 142-04A, AND SECTION 142.0412; ALL RELATING TO BRUSH MANAGEMENT.

BE IT ORDAINED, by the Council of the City of San Diego, as follows:

Section 1. That Chapter 4, Article 4, Division 3, of the San Diego Municipal Code is amended by amending Section 44.0307 to transfer the regulations related to use of goats for brush management to Chapter 14, Article 2, Division 4, and amending Section 142.0402, Table 142-04A, and Section 142.0412, to read as follows:

§44.0307 Cattle, Goats and Sheep

(a) [No change.]

(b) Section 44.0307(a) shall not apply to the following:

- (1) Dairies or dairy farms licensed during the month of July 1953.
- (2) Any goats brought in temporarily, to privately-owned non-agricultural zones for the purpose of performing brush management in accordance with the Land Development Code section 142.0412.

(c) [No change.]

§142.0402 When Landscape Regulations Apply

- (a) [No change.]
- (b) [No change to first paragraph.]

Table 142-04A

Landscape Regulations Applicability

Type of Development Proposal			Applicable Regulations	Required Permit Type/ Decision Process
Column A	Column B	Column C		
1 - 9 [No change.]				
10.	Publicly or privately owned <i>premises</i> , that are within 100 feet of a <i>structure</i> , and contain native or naturalized vegetation.		142.0403, 142.0412, and 142.0413	No permit, required by this division if work is performed in accordance with applicable regulations
11.	New <i>structures</i> , additions to <i>structures</i> , or subdivisions that create <i>lots</i> where new <i>structures</i> could be located on <i>premises</i> adjacent to native or naturalized vegetation		142.0403, 142.0412, and 142.0413	Building Permit/ Process One
12.	New Trees or shrubs planted in the <i>public right-of-way</i>		62.0603, 129.0702, 142.0403 and 144.0409	Public Right-of-Way Permit or Street Tree Permit/ Process One
13.	<i>Condominium Conversions</i>		142.0403, 142.0404, 142.0405(b)(1), 142.0409(a), 142.0412, and 142.0413	No permit required by this division

§142.0412 Brush Management

Brush management is required in all base zones on publicly or privately owned *premises* that are within 100 feet of a *structure* and contain native or naturalized vegetation.

- (a) Brush management activity is permitted within *environmentally sensitive lands* (except for *wetlands*) that are located within 100 feet of an existing *structure* in accordance with Section 143.0110(c)(7). Brush management in *wetlands* may be requested with a *development permit* in accordance with Section 143.0110 where the Fire Chief deems brush management necessary in accordance with Section 142.0412(i). Where brush management in *wetlands* is deemed necessary by the Fire Chief, that brush management shall not qualify for an exemption under the Environmentally Sensitive Lands Regulations, Section 143.0110(c)(7).

- (b) [No change.]

- (1) Brush management Zone One is the area adjacent to the structure, shall be least flammable, and shall typically consist of pavement and permanently irrigated ornamental planting. Brush management Zone One shall not be allowed on slopes with gradient greater than 4:1 (4 horizontal feet to 1 vertical foot) unless the property received *tentative map* approval before November 15, 1989. However, within the Coastal Overlay Zone *coastal development* shall be subject to the *encroachment* limitations set forth in Section

143.0142(a)(4) of the Environmentally Sensitive Lands Regulations.

- (2) Brush management Zone Two is the area between Zone One and any area of native or naturalized vegetation and typically consists of thinned, native or naturalized non-irrigated vegetation.
- (c) The width of Zone One and Zone Two shall not exceed 100 feet and shall meet the width requirements in Table 142-04H unless modified based on existing conditions pursuant to Section 142.0412(i) and the following:
 - (1) The establishment of brush management Zones One and Two for new *development* shall be addressed in a site-specific plan to include all creative site and/or structural design features to minimize impacts to undisturbed native vegetation. Both Zone One and Zone Two shall be provided on the subject property unless a recorded easement is granted by an adjacent property owner to the owner of the subject property to establish and maintain the required brush management zone(s) on the adjacent property in perpetuity.
 - (2) Where Zone Two is located within City-owned property, a Right-of-Entry shall be executed in accordance with Section 63.0103 prior to any brush management activity. Zone Two brush management is not permitted in City-owned open space for new *development* proposals. For properties in the Coastal Overlay

Zone, additional requirements for new *subdivisions* are found in Section 142.0412 (n).

Table 142-04H
Brush Management Zone Width Requirements

Zone One Width	35 ft.
Zone Two Width	65 ft.

(d) through (g) [No changes.]

(h) Zone Two Requirements

(1) through (4) [No changes.]

(5) [No change first paragraph.]

(A) All new plant material for Zone Two shall be native, low-fuel, and fire-resistive. No non-native plant material may be planted in Zone Two either inside the MHPA or in the Coastal Overlay Zone, adjacent to areas containing *sensitive biological resources*.

(B) New plants shall be low-growing with a maximum height at maturity of 24 inches. Single specimens of fire resistive native trees and tree form shrubs may exceed this limitation if they are located to reduce the chance of transmitting fire from native or naturalized vegetation to habitable *structures* and if the vertical distance between the lowest branches of the trees and the top of adjacent plants are three times the height of the adjacent plants to reduce the spread of fire through ladder fueling.

(C) through (D) [No change.]

(6) Zone Two shall be maintained on a regular basis by pruning and thinning plants, removing invasive species, and controlling weeds.

(7) [No change.]

(i) In consideration of the topography, existing and potential fuel load, and other characteristics of the site related to fire protection, the Fire Chief may modify the requirements of this Section, and where applicable with the approval of the Building Official, may require building features for fire protection in addition to those required in accordance with Chapter 14, Article 5, Division 5 (Additional Building Standards for Buildings Located Adjacent to Hazardous Areas of Native or Naturalized Vegetation) if the following conditions exist:

(1) through (3) [No changes.]

(j) – (l) [No changes.]

(m) Where specifically authorized by the Fire Chief, goats may be used for brush management in accordance with the following:

(1) In order to prevent escapes, harassment from predators or humans, or over browsing, goats shall be managed and monitored 24-hours a day by a contractor with at least two years experience in raising, handling, and controlling of goats. The goat contractor shall maintain a minimum of \$1 million of liability insurance subject to approval by the Office of the City Attorney.

- (2) At least 10 business days prior to using goats for brush management, the property owner shall apply to the Fire Rescue Department for a permit to use goats for brush management. The *applicant* shall:
- (A) Obtain and submit written permission from the owner of any property through which the goats must gain access to the area to be browsed.
 - (B) Provide written notice to the Fire Chief and all owners and residents of property located immediately adjacent to the area to be browsed. This notice shall identify Sections 44.0307 and 142.0412(m) as the authority for temporary use of goats.
 - (C) Provide photographs of the existing condition of the site, and a plan describing the methods to be employed and measures to retain existing vegetation in compliance with Section 142.0412(h).
- (3) The area to be browsed shall be measured, staked, and appropriately fenced with temporary electrically charged fencing to delineate the Zone Two brush management areas. Signs must be posted at 25-foot intervals along the fence warning of the possibility of mild electric shock.

- (4) The timing of brush management activities shall comply with Section 142.0412(d).
- (5) While goats are browsing:
 - (A) No more than 75 goats are permitted on a single acre of the *premises*.
 - (B) Goats shall be moved along periodically so that no more than 50 percent of the vegetation is thinned or reduced.
 - (C) The goats shall remain within a secure enclosure at all times.
 - (D) Goats shall be moved into a separate holding pen at night, which shall be located the maximum distance reasonably practicable from residences.
 - (E) Droppings in the holding pen, and to the extent reasonably possible within the brush management area, shall be removed and properly disposed of daily in accordance with Section 44.0307.
 - (F) The goats shall be used for brush management only and shall be immediately removed when the brush thinning has been accomplished.
- (6) No later than 5 business days from the date of removal of the goats, the *applicant* shall notify the Fire Chief in writing of the removal of the goats.

- (7) The Fire Rescue Department shall not approve any permit under Section 142.0412(m) that will utilize a contractor determined by the City Manager to have negligently performed brush management services within the three prior calendar years. All facts supporting such a determination shall be provided to the *applicant* in writing, and shall constitute a final determination on the City's behalf.
- (n) Within the Coastal Overlay Zone, brush management for new *subdivisions* shall not be permitted to encroach into an environmentally sensitive habitat area [ESHA], except that *encroachment* may be permitted where necessary to achieve a maximum *development* area of 25 percent including Zones One and Two. For purposes of this Section, ESHA shall include southern fordunes, torrey pines forest, coastal bluff scrub, maritime succulent scrub, maritime chaparral, native grasslands, oak woodlands, coastal sage scrub and coastal sage scrub/communities, and any vegetative communities that support threatened or endangered species.
- (o) Violations and Remedies
- (1) The provisions of this division shall be enforced pursuant to Chapter 12, Article 1, Division 2 (Enforcement Authorities for the Land Development Code), and Chapter 12, Article 1, Division 3 (Violations of the Land Development Code and General Remedies).

- (2) In accordance with Section 121.0312, the City Manager may order reasonable restoration of the *premises* and any adjacent affected site to its lawful condition or may require reasonable mitigation at the sole cost of the responsible person.

Section 2. That a full reading of this ordinance is dispensed with prior to its passage, a written or printed copy having been available to the City Council and the public prior to the day of its final passage.

Section 3. This ordinance shall take effect and be in force on the thirtieth day after its final passage. However, this ordinance will not apply within the Coastal Zone until the California Coastal Commission unconditionally certifies this ordinance as a Local Coastal Program Amendment.

[Note to City Clerk: Add new Editors note at the end of Section 142.0412 to alert code users that a Resolution (R-2008-366) was passed by the Council to temporarily allow goat monitoring in the coastal overlay zone for a 5 year trial period during which annual monitoring reports would be distributed to the Coastal Commission. If at the end of 5 years, monitoring reports indicate that the use of goats has adversely impacted ESHA, the use of goats in the coastal zone would be discontinued. Delete Editors note at the end of Chapter 13, Article 2, Division 4 and delete Sections 132.0404, 132.0405, 132.0406, 132.0407, and 132.0408 following unconditional certification by the Coastal Commission.]

STRIKEOUT ORDINANCE

OLD LANGUAGE: ~~Struck Out~~NEW LANGUAGE: Underlined

(O-2008-60.REVISED COPY)

ORDINANCE NUMBER O-_____ (NEW SERIES)

DATE OF FINAL PASSAGE _____

AN ORDINANCE OF THE COUNCIL OF THE CITY OF SAN DIEGO AMENDING CHAPTER 4, ARTICLE 4, DIVISION 3, OF THE SAN DIEGO MUNICIPAL CODE BY TRANSFERRING REGULATIONS RELATED TO USE OF GOATS FOR BRUSH MANAGEMENT FROM SECTION 44.0307 TO CHAPTER 14, ARTICLE 2, DIVISION 4; AND AMENDING CHAPTER 14, ARTICLE 2, DIVISION 4, BY AMENDING SECTION 142.0402, TABLE 142-04A, AND SECTION 142.0412; ALL RELATING TO BRUSH MANAGEMENT.

§44.0307 Cattle, Goats and Sheep

(a) [No change.]

(b) Section 44.0307(a) shall not apply to the following:

Dairies or dairy farms licensed during the month of July 1953.

- (2) Any goats brought in temporarily, to privately-owned non-agricultural zones for the purpose of performing brush management in accordance with the Land Development Code section 142.0412, ~~Brush Management, subject to the following requirements:~~

~~The goats shall be managed and monitored 24 hours a day by a person who has at least two years experience in the raising,~~

~~handling, and controlling of goats, and who carries a minimum of \$1 million of liability insurance, to prevent escapes, harassment from predators or humans, or over browsing.~~

~~The owner of the property to be browsed by the goats shall notify, in writing, the City of San Diego Fire Marshal and all owners and residents with property located immediately adjacent to the area to be browsed by goats, at least 10 business days prior to beginning operation. This notice shall identify section 44.0307 as the authority for the temporary use of goats.~~

~~The owner of the property to be browsed by the goats shall obtain written permission from the owner of any property through which the goats must gain access to the area to be browsed by goats, at least 10 business days prior to beginning operation.~~

~~The area to be browsed by goats shall be measured, staked, and appropriately fenced with temporary electrically charged fencing to delineate the brush management areas required under the Land Development Code section 142.0412, Brush Management. Signs must be posted at 25-foot intervals along the fence warning the possibility of mild electric shock.~~

~~When browsing, no more than 75 goats are permitted on any single acre of the premises.~~

~~When browsing, the goats shall be moved along periodically so that no more than 50 percent of the vegetation is thinned or reduced, in accordance with the Land Development Code section 142.0412, Brush Management.~~

~~The goats shall remain within a secure enclosure at all times. The goats may be moved to a separate holding pen at night, which shall be located the maximum distance practicable from residences. In addition to the requirements set forth in section 44.0307(e), droppings in the holding pen shall be removed and properly disposed of daily.~~

~~Brush Management activities are prohibited within coastal sage scrub, maritime succulent scrub, and coastal sage chaparral habitats from March 1 through August 15, except where documented to the satisfaction of the City Manager that the clearing would be consistent with conditions of species coverage described in the City of San Diego's MSCP Subarea Plan.~~

~~The goats shall be used for brush management only and shall be immediately removed when the brush thinning has been accomplished. No later than 5 business days from the date of the removal of the goats, the owner of the property browsed by the goats shall notify, in writing, the City of San Diego Fire Marshal of the removal of the goats.~~

(3) ~~Any use of goats by the City of San Diego or its permittee for the purpose of performing brush management on City-owned property in non-agricultural zones in accordance with the Land Development Code section 142.0412, Brush Management, or for weed abatement, are subject to the requirements set forth in section 44.0307(b) (2) (A) (I) and 44.0307(c).~~

(c) [No change.]

§142.0402 When Landscape Regulations Apply

(a) [No change.]

(b) [No change to first paragraph.]

Table 142-04A

Landscape Regulations Applicability

Type of Development Proposal			Applicable Regulations	Required Permit Type/ Decision Process
Column A	Column B	Column C		
1 - 9 [No change.]				
10.	Undeveloped publicly or privately owned premises that are within 100 feet of a structure, that and contain native or naturalized vegetation or environmentally sensitive lands		142.0403, 142.0412, and 142.0413	No permit required by this division if work is performed in accordance with applicable regulations
11.	New structures, additions to structures, or subdivisions that create lots where new structures could be located on premises adjacent to native or naturalized vegetation		142.0403, 142.0412, and 142.0413	Building Permit/ Process One

Type of Development Proposal	Applicable Regulations	Required Permit Type/ Decision Process
11. 12. New Trees or shrubs planted in the <i>public right-of-way</i>	62.0603, 129.0702, 142.0403 and 144.0409	Public Right-of-Way Permit or Street Tree Permit/ Process One
12. 13. Condominium Conversions	142.0403, 142.0404, 142.0405(b)(1), 142.0409(a), 142.0412, and 142.0413	No permit required by this division

§142.0412 Brush Management

(a) Brush management is required in all base zones on ~~the following types of~~ premises:

(1) ~~P~~publicly or privately owned *premises* that are within 100 feet of a *structure* and contain native or naturalized vegetation.

(2)(a) ~~Except for wetlands,~~ Brush management activity is permitted within environmentally sensitive lands (except for wetlands) that are located within 100 feet of an existing structure in accordance with Section 143.0110(c)(7). Brush management in wetlands may be requested with a development permit in accordance with Section 143.0110 where unless the Fire Chief deems brush management necessary in wetlands in accordance with Section 142.0412(i).

Where brush management in *wetlands* is deemed necessary by the Fire Chief, that brush management shall not qualify for an exemption under the Environmentally Sensitive Lands Regulations, Section 143.0110(c)(7).

(b) [No change.]

(1) Brush management Zone One is the area adjacent to the structure, shall be least flammable, and shall typically consist of pavement and permanently irrigated ornamental planting. Brush management Zone One shall not be allowed on slopes with gradient greater than 4:1 (4 horizontal feet to 1 vertical foot) unless the property ~~that~~ received *tentative map* approval before November 15, 1989. However, within the Coastal Overlay Zone *coastal development* shall be subject to the ~~encroachment~~ *encroachment* limitations set forth in Section 143.0142(a)(4) of the Environmentally Sensitive Lands Regulations.

(2) Brush management Zone Two is the area between Zone One and any area of native or naturalized vegetation and ~~shall~~ typically consists of thinned, native or naturalized non-irrigated vegetation.

(c) ~~Except as provided in Sections 142.0412(f) or 142.0412(i),~~ The width of Zone One and Zone Two shall not exceed 100 feet and shall meet ~~that the~~ width requirements shown in Table 142-04H unless modified based on existing conditions pursuant to Section 142.0412(i) and the following:

(1) The establishment of brush management Zones One and Two for new development shall be addressed in a site-specific plan to include all creative site and/or structural design features to minimize impacts to undisturbed native vegetation. Both Zone One and Zone Two shall be provided on the subject property

unless a recorded easement is granted by an adjacent property owner to the owner of the subject property to establish and maintain the required brush management zone(s) on the adjacent property in perpetuity.

- (2) Where Zone Two is located within City-owned property, a Right-of-Entry shall be executed in accordance with Section 63.0103 prior to any brush management activity. Zone Two brush management is not permitted in City-owned open space for new development proposals. For properties in the Coastal Overlay Zone, additional requirements for new subdivisions are found in Section 142.0412 (n).

Table 142-04H
Brush Management Zone Width Requirements

Zone One Width	35 ft.
Zone Two Width	65 ft.

(d) through (g) [No changes.]

(h) Zone Two Requirements

(1) through (4) [No changes.]

(5) [No change first paragraph.]

(A) All new plant material for Zone Two shall be native ~~non-~~irrigated, low-fuel, and fire-resistive. No non-native plant material may be planted in Zone Two either inside the MHPA or in the Coastal Overlay Zone, adjacent to areas containing *sensitive biological resources*.

(B) New plants shall be low-growing with a maximum height at maturity of 24 inches. Single specimens of fire ~~resistant~~ resistive native trees and tree form shrubs may exceed this limitation if they are located to reduce the chance of transmitting fire from native or naturalized vegetation to habitable *structures* and if the vertical distance between the lowest branches of the trees and the top of adjacent plants are three times the height of the adjacent plants to reduce the spread of fire through ladder fueling.

(C) through (D) [No change.]

(6) Zone Two shall be maintained on a regular basis by pruning and thinning plants, removing invasive species, and controlling weeds, ~~and maintaining any temporary irrigation system.~~

(7) [No change.]

(i) In consideration of the topography, existing and potential fuel load, and other characteristics of the site related to fire protection, the Fire Chief may modify the requirements of this sSection, and where applicable with the approval of the Building Official, may require building features for fire protection in addition to those required in accordance with Chapter 14, Article 5, Division 5 (Additional Building Standards for Buildings Located Adjacent to Hazardous Areas of Native or Naturalized Vegetation) if the following conditions exist:

(1) through (3) [No changes.]

(j) - (l) [No changes.]

(m) Where specifically authorized by the Fire Chief, goats may be used for brush management in accordance with the following:

(1) In order to prevent escapes, harassment from predators or humans, or over browsing, goats shall be managed and monitored 24-hours a day by a contractor with at least two years experience in raising, handling, and controlling of goats. The goat contractor shall maintain a minimum of \$1 million of liability insurance subject to approval by the Office of the City Attorney.

(2) At least 10 business days prior to using goats for brush management, the property owner shall apply to the Fire Rescue Department for a permit to use goats for brush management. The applicant shall:

(A) Obtain and submit written permission from the owner of any property through which the goats must gain access to the area to be browsed.

(B) Provide written notice to the Fire Chief and all owners and residents of property located immediately adjacent to the area to be browsed. This notice shall identify Sections 44.0307 and 142.0412(m) as the authority for temporary use of goats.

- (C) Provide photographs of the existing condition of the site, and a plan describing the methods to be employed and measures to retain existing vegetation in compliance with Section 142.0412 (h).
- (3) The area to be browsed shall be measured, staked, and appropriately fenced with temporary electrically charged fencing to delineate the Zone Two brush management areas. Signs must be posted at 25-foot intervals along the fence warning of the possibility of mild electric shock.
- (4) The timing of brush management activities shall comply with Section 142.0412(d).
- (5) While goats are browsing:
- (A) No more than 75 goats are permitted on a single acre of the premises.
- (B) Goats shall be moved along periodically so that no more than 50 percent of the vegetation is thinned or reduced.
- (C) The goats shall remain within a secure enclosure at all times.
- (D) Goats shall be moved into a separate holding pen at night, which shall be located the maximum distance reasonably practicable from residences.

- (E) Droppings in the holding pen, and to the extent reasonably possible within the brush management area, shall be removed and properly disposed of daily in accordance with Section 44.0307.
- (F) The goats shall be used for brush management only and shall be immediately removed when the brush thinning has been accomplished.
- (6) No later than 5 business days from the date of removal of the goats, the *applicant* shall notify the Fire Chief in writing of the removal of the goats.
- (7) The Fire Rescue Department shall not approve any permit under Section 142.0412(m) that will utilize a contractor determined by the City Manager to have negligently performed brush management services within the three prior calendar years. All facts supporting such a determination shall be provided to the *applicant* in writing, and shall constitute a final determination on the City's behalf.
- (n) Within the Coastal Overlay Zone, brush management for new *subdivisions* shall not be permitted to encroach into an environmentally sensitive habitat area (ESHA), except that *encroachment* may be permitted where necessary to achieve a maximum *development* area of 25 percent including Zones One and Two. For purposes of this Section, ESHA shall include southern *fordunes*, *torrey pines* forest, coastal bluff scrub, maritime

succulent scrub, maritime chaparral, native grasslands, oak woodlands, coastal sage scrub and coastal sage scrub/communities, and any vegetative communities that support threatened or endangered species.

(o) Violations and Remedies

- (1) The provisions of this division shall be enforced pursuant to Chapter 12, Article 1, Division 2 (Enforcement Authorities for the Land Development Code), and Chapter 12, Article 1, Division 3 (Violations of the Land Development Code and General Remedies).
- (2) In accordance with Section 121.0312, the City Manager may order reasonable restoration of the premises and any adjacent affected site to its lawful condition or may require reasonable mitigation at the sole cost of the responsible person.

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